

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186705

DATE: July 21, 1976

MATTER OF: Petersen Enterprises, Inc.

## DIGEST:

1. Bid protest filed in this Office more than 10 days after notice of agency's rejection of bid as nonresponsive is untimely since bid rejection constitutes adverse agency action on initial protest to agency and further protest must be filed with GAO within 10 days from receipt of such information.
2. Pursuant to 4 C.F.R. 20.2(b)(3) bid protest was untimely despite fact that it was sent by certified mail, for postmark was illegible and there was no Postal Service receipt indicating date of mailing.
3. No legal basis exists for allowing claim by unsuccessful bidder for profits anticipated from Government contract. See cases cited.

By a certified letter dated May 25, 1976, Petersen Enterprises, Inc. (Petersen) has protested to this Office the Air Force's failure to award to Petersen the contract under invitation for bids (IFB) F42650-76-09052. The contract was for the modification of Building 1229 at Hill Air Force Base, Utah, in order to relocate reproduction facilities. As explained below, we must reject Petersen's protest as untimely.

Our Bid Protest Procedures read in part as follows:

"§20.2 Time for filing.

(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest

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to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section,  
\* \* \*

"(b)(2) \* \* \* bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

"(b)(3) The term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt." 4 C.F.R. 20.2(a), (b)(2) & (b)(3) (1976).

Petersen first learned at bid opening on May 4, 1976, that its bid would be rejected as nonresponsive for failure to acknowledge an amendment. Apparently, Petersen protested this action, and according to Petersen's attorneys, on May 18, 1976, a legal officer at Hill AFB verbally indicated to Petersen that in his opinion the contracting officer's decision to reject Petersen's bid as nonresponsive had been correct. Also, by letter of the same date, Peterson was advised that award had been made to the next lowest bidder. We believe such an indication to Petersen that its bid had been rejected constitutes notice of adverse agency action on its initial protest to the agency. Since Petersen's protest arrived at this Office on June 9, 1976, more than 10 working days after notice of adverse agency action, it is untimely.

Nor can the fact that Petersen sent its protest by certified mail render it timely. Our Bid Protest Procedures states that:

"\* \* \* any protest received in the General Accounting Office after the time limits prescribed in this section shall not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mail-gram not later than the third day, prior to the final date

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for filing a protest as specified herein. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. \* \* \*.

"If the postmark \* \* \* is illegible, the protest shall be deemed to have been filed late." 4 C.F.R. 20.2(b)(3) (1976).

Although the date in the heading of the protest letter is May 25, 1976, the postmark is illegible, and upon inquiry to Petersen's attorneys we learned that no Postal Service receipt indicating the mailing date was available. Pursuant to the above quoted procedures, Petersen's protest must be dismissed as untimely since the postmark is illegible.

Finally, Petersen's letter to this Office requests damages for lost profit in the amount of \$10,000 in the event that Petersen is not awarded the contract at issue. We could not allow this claim, for it is well settled that there is no authority for compensating unsuccessful bidders for profits anticipated under a Government contract. 53 Comp. Gen. 357, 363 (1973); Mack Electric Company, B-180392, May 6, 1974, 74-1 CPD 227 at 2; B-177489, December 14, 1972, and cases cited therein.

  
Deputy Comptroller General  
of the United States